

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.228 OF 2005

Sanjay Bhattacharyaji).. Petitioner

Versus

UTV Software Communications Limited).. Respondent

Mr.Birendra Saraf i/b.D.H.Law for the Petitioner.

Mr.J.P. Sen with Mr.Jariwala i/b.Thakore Jariwala &
Co. for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 25TH NOVEMBER 2005

P.C.:

. This Petition seeks winding up of the company known as UTV Software Communications Limited. The Petitioner was employed by an agreement of 26th July 2002. He was appointed as a Chief Operating Officer to head the Motion Picture Division of the Company initially for a period of two years, with retrospective effect from 1st April 2002. He was to be paid remuneration by way of professional fees, petrol and mobile phone reimbursement subject to a ceiling. He was also entitled to a commission of 5% on the net profits of the Division to be calculated cumulatively on all the projects undertaken each year ending on "31st March" and was to be paid the amount on 31st July after completion of the audit of the

Company's accounts. The term "net profits" has been defined in the letter of appointment dated 26th July 2002. It appears that the services of the Petitioner were terminated by a letter dated 10th April 2003 with effect from 10th May 2003. Although the Petitioner was paid his professional fees, the commission remains to be paid. On this basis, the Petitioner approached the Respondent Company to make payment through his Advocate's letter dated 1st September 2005. This letter was in fact a statutory notice issued under Section 434(1)(a) of the Companies Act, 1956. In reply to this notice, the Company through its Advocate raised a dispute contending that no profits were earned upto the period 31st March 2003 and all payments had been made to the Petitioner in accordance with the letter of appointment.

2. It is the Petitioner's contention that he is entitled to a commission of 5% on all projects undertaken while he was in service and would be so entitled to any profits earned from these projects in future.

3. Per contra, Mr.Sen for the Respondent Company submits that there is a bona fide dispute which the Company has raised regarding payment of the 5% commission. According to him, it is only those profits which were generated in the year ending 31st March 2003 which would be payable to the Petitioner irrespective

whether the project was in fact undertaken in that year or in an earlier year. He submits that the Motion Picture Division has not earned any profits during the financial year ending on 31st March 2003 and therefore no commission was payable to the Petitioner.

4. In my view, bona fide dispute has arisen regarding the interpretation of Clause 9 of the appointment letter dated 26th July 2002. The provisions of Sections 433 and 434 of the Companies Act, 1956 are not attracted as there is a genuine dispute regarding the Petitioner's entitlement to the commission.

4. The Petitioner is, therefore, relegated to the remedy of filing a Suit. Company Petition dismissed.